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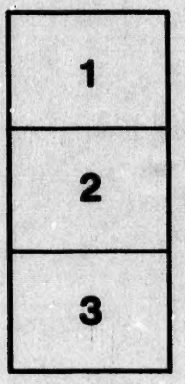

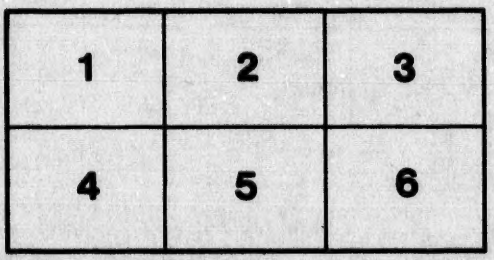

AN

ESSAY

ON THE

MISCHIEVOUS TENDENCY

OF

IMPRISONING FOR DEBT,

AND IN

OTHER CIVIL CASES.

Second Edition.

WITH AN APPENDIX MUCH ENLARGED.

by Beamish Murdoch Esqr

"It doth appear, you are a worthy judge;
You know the law, your exposition
Hath been most sound: I charge you by the law,
Whereof you are a well-deserving pillar,
Proceed to judgment: by my soul I swear,
There is no power in the tongue of man
To alter me: I stay here on my bond."

Merchant of Venice, Act 4. Scene 1.

Summum jus, summa injuria.

"The object of imprisonment for debt is not intended for the punishment of the debtor, but to compel him to discharge the debt out of property, such as money in the funds, or debts due to him, which cannot be reached by any legal process."—NOTES on Blackstone's Commentaries by Professor Christian, Chief Justice of the Isle of Ely, &c. &c. Vol. 3. p. 414. Edition of 1803.

HALIFAX, N. S.

PRINTED BY J. S. CUNNABELL.

1831.

Advertisement to the Second Edition.

In 1827 I had a few copies of the following Essay printed and distributed among the Members of the Legislature. My sentiments on the subject have rather gained than lost strength in the interval. I have collected in the Appendix materials respecting imprisonment for debt, which I trust the reader will find interesting. They will shew that much attention has been paid to the question in neighbouring countries, and that the principle of abolishing this harsh law is gaining ground. Genuine improvements can only be expected from persevering and patient efforts. To keep the mind awake to an important question, and to make it the topic of repeated deliberation and discussion, is the surest method of arriving at the truth, and of dispelling the prejudices that too often obscure it. M.

Halifax, December, 1831.

TO

THE MEMBERS OF BOTH BRANCHES

OF THE

PROVINCIAL LEGISLATURE

OF

NOVA-SCOTIA.

THE writer begs leave most respectfully and humbly to dedicate the reflections, which personal observation of the cruel operation of certain existing laws have suggested to him. This Province has to date many valuable improvements from the period of the administration of his Excellency Sir James Kempt. If to those ameliorations, the wisdom and zeal of the legislature under his Excellency's benevolent and constitutional superintendance should be enabled to add a relaxation of the present laws of debtor and creditor, and to introduce confidence and goodwill in lieu of suspicion and distrust, without injuring the bulwarks of mercantile credit, but rather giving them additional security, every Nova-Scotian heart would be deeply impressed with gratitude to the rulers of the land for so great a boon.

It would be presumptuous in an humble individual to propose measures of such moment, but the writer is informed that the question will be brought under discussion, and he has therefore taken the liberty of bringing his ideas before you in the following pages.

Halifax, 1827.

ESSAY.

Before entering on the subject of Imprisonment for Debt, it may not be amiss to take a review of the laws between Debtor and Creditor before civil imprisonment was known.

The Hebrews according to the code of their inspired legislator gave the creditor a right to the services of his debtor when the latter became unable to pay him.—The debtor became his creditor's bond servant, not for life or an undefined and arbitrary period, but for six years at furthest, at the end of which period their connection terminated.

The other nations of antiquity acted on a similar principle, and the debtor was obliged to work for his creditor for a certain period, sometimes for life.

In England no imprisonment of the subject was known except in cases of crime until the thirteenth century.—It appears that in the reign of Henry III. the bailiffs or stewards of persons of property who were in the habit of receiving their monies, had in many cases contrived to secrete their wealth or to send it abroad, and when the owners sought an account

from them, they could find nothing but their persons to levy their executions on. In consequence of this the statute of Marlebridge 52, Hen. 3, C. 23, passed in the year 1267—enacted that in actions of account the debtor should be arrested, or, to use other terms, that he should be treated as criminals alone had been before.

This regulation was extended by Westminster the second, 13 Edw. 1, C. 11, passed in 1284.

This was further extended to actions of debt by 25 Edw. 3, C. 17, passed in 1350, and to actions on the case by 19 Hen. 7, C. 9, passed in 1503.

Thus the general principle of English law has remained since the passing of those acts, but it has been so modified from various causes, that it cannot be said to press with the extreme hardship on the Englishman that one would suppose from a casual view of the laws.

The whole mercantile body are protected, if not entirely, yet to a very great extent from suffering the rigors of imprisonment in England, by the statutes of bankruptcy, they have by this system the means of obtaining personal freedom, of wiping off all their old debts and beginning the world again under better au-

spices, unless by some glaring fraud they may have forfeited the protection of the laws that are intended for their benefit. —These laws extend to every class of dealer, trader, manufacturer, in fact every one who has any thing to do with buying and selling. Another modification of those hardships is found in the general and temporary insolvent acts, and besides these the liberality and humanity of a great and wealthy nation and of distinguished individuals, are often interposed to snatch the unfortunate victims from the jaws of destruction.—Those persons who are not kept out of prison by some of the foregoing means, are yet in a very different situation from that of prisoners closely confined.—Almost all the gaols in the kingdom give their inmates some degree of comfort and freedom, and they can at any time be removed on their own application to the King's Bench in the metropolis.—There they have a quarter of the city to themselves. —They breathe the air and rejoice in the light of heaven, and many of them obtain frequent permissions called day rules, enabling them to visit other parts of the capital where their affairs may carry them.

By the laws of Lower Canada, the creditor cannot arrest his debtor except upon

proof of the latter's intention of absconding from the reach of the laws.

By the present laws of Nova Scotia, the debtor can be arrested in any case where the creditor chooses to swear that he is indebted to him. The debtor is then closely imprisoned; he is separated from his business, his friends and his family, and no one is permitted to be with him except at stated hours, as a visitor. The wife of a sick or infirm man, his child or his bosom friend may wish to watch over or to console him. The regulations of our law forbid in practice the exertion of their natural humanity, and even their visits in the day time are by the permission and under the discretion of the jailor for the time being. If the unfortunate debtor require legal advice and the visits of a lawyer or of a physician, there are a thousand circumstances to deter those of the strongest nerves in the learned professions from making visits but rarely—

"——— few and far between."

The bars, the bolts, the military guards,--the neighborhood or presence of criminals under the same roof,—the vicinity of the receptacles of misery,--pauperism and insanity,—the squalid appearance of the inmates of a close prison, their revolting habits acquired or strengthened by bad

society. All these features of an odious policy are so many operating and powerful causes to drive far away the voice of religion, of consolation, of humanity and kindness from a prison.

Those who are not informed on this subject, may suppose that we have some regulation by which the insolvent debtor if honest may protect himself by swearing out. We have, it is true, an Act for the relief of insolvent debtors, but what does it say? The debtor (after the creditor has carried on his suit, tried it,* and got judgment in his favor) may petition to be enlarged, may swear to his honesty and inability to pay, and on his then assigning his remaining effects and debts to his creditor may be enlarged, *if the creditor consents*, but not otherwise. The creditor, refusing to liberate him under these circumstances, may keep him there as long as he lives, provided he finds him a few pounds of biscuit per week.

But I shall be told by those who are inclined to keep up severity against debtors, that the creditor will seldom imprison his debtor when the latter acts an honest

*The law does not give a prisoner liberty to be present in Court at the trial of his own Cause, though he may be brought down by habeas corpus as a witness in a stranger's law suit.

part, that something is required to prevent men from running in debt beyond their probable means of payment—that the generality of prisoners are worthless—that you find a fraudulent debtor more frequently than an inhuman creditor.

There are many obvious causes to deter men from incurring debt imprudently, without making such conduct the subject of legal punishment. It is indeed one of those errors which carry their punishment with them. The loss of credit, the degradation, the importunities and the endless troubles that follow him who takes up too extensive a credit, comprise a body of misfortunes from which the laws can never grant exemption. No person possessed of common prudence will incur debts beyond his probable means of discharging. Young and rash people, and those of desperate characters or desperate fortunes, may be willing to incur debts without much reflection as to the day or means of payment. But what prudent man would be disposed to give credit in such cases? It is only the imprudent trader, or at least the trader who knowingly incurs the risk of a bad paymaster, to get a larger profit, that would give credit to rash heedless persons, or to those of ruined fortune and

character. And if a loss should follow, how can such a creditor look to the laws for revenge on the indifferent customers he has chosen to deal withal? What is his language? "I have trusted Mr. ——— who is a person without funds, or without character, or a spendthrift, or a gambler, or a speculator;—the day of payment has come round and he has not brought me the money. I now look to the laws to enable me to send him to jail, and keep him confined until I am paid."—"Did you know his character when you trusted him?" "Oh yes I did," or "I might easily have ascertained it," or "We are in the habit of trusting very generally in order to sell faster," or "I got a better price on the sale than a more cautious customer would have given, and so I took my chance." "Has he any means to pay?" "Oh no, but some of his relations or friends have, and it may be they will pay it for the honor of their family, or to save him from dying in a prison."

Now is it not abundantly clear that in such instances he who gives trust is as much in fault as he who receives credit? Should the feelings of humanity and the laws of nature be continually outraged and forgotten, for the protection of imprudent and speculating traders?

To give the creditor in all cases the arbitrary power of imprisoning the individuals whom misfortunes, perhaps of the most unexpected and calamitous nature, have put in his grasp, is to give power into hands the most likely to abuse it. Trust any man with arbitrary power and you tempt him to do wrong. But the creditor of an insolvent has additional temptations to err. He is irritated at the loss of his money, and when he thinks of his poor debtor, he does not think of him as of a brother man, a fellow citizen, a fellow countryman, a fellow christian, but he thinks naturally of his being instrumental in taking from him part of his wealth. He is apt to dislike him on that account, and disliking, more apt to suspect him of fraud or misconduct. Is he then cool and disinterested enough to judge dispassionately of his debtor's conduct? Suspicion and dislike must give him a double bias against the cause of his irritation, and where suspicion has entered, every light breath can fan it into a flame. The unfortunate, we know, have but few friends, and there are minds so despicable as to rejoice at others' calamities, and to take a dark pleasure in heaping sufferings on those who are falling, whether they have resentments to gratify

or not. Such may be the counsellors who meet the angered creditor, and instil venomed slanders into his unguarded ear against the unfortunate.—So imperfect, so liable to error is man, that no wise man would wish to be trusted with too much power. Shall the exercise of so great a power then be left in all kinds of hands?

Man is an imitative animal. From this propensity it happens, that many resort to severe measures merely because they see severity practised, and they do not sufficiently reflect or bring the matter home to their own hearts.

It is said that many are deterred from running in debt by the fear of a prison,—I much doubt the truth of the assertion. If bad debts were uncommon occurrences, it might be more probable, but we know that extravagance and recklessness are not to be cured by a jail, nor by the fear of going there. I question much if you were to punish those vices capitally, whether you would lessen their prevalence—I am almost sure you would not. A jail may teach or foster vicious habits, it is but a poor seminary for improvement of the human character.

It may be, and no doubt will be objected to all that the dictates of natural

feeling and ordinary common sense will suggest, that every institution is liable to be abused, and that one should consider its usefulness and necessity, and not argue from the abuses that it is liable to, against its existence. This is reasonable enough when applied to those regulations which are essential to the well being of society. Unless certain powers were entrusted to the rulers of the country, the irregular passions of human nature would break loose and confound the best endeavors of the worthy for the public good. Unless regulations were made for the protection of the different classes of society, good order and security could not exist, and the arm of labor would be paralyzed. It is quite a different case however, with an institution like that now complained of. It is not one of the essential requisites of society, because it has been proved in a variety of instances, that society can exist and prosper without it.

The objections now made are not pointed at a temporary restraint on the liberty of individuals, where there is reason to suspect them of an attempt to defraud or to elude their creditors.—Such a suspicion should in justice entitle the creditor to claim a temporary restriction

of the movements of the debtor, because he otherwise might be a loser, although such suspicions do not fix crime on the debtor, nor is it reasonable to exempt the debtor who is convicted of an attempt to defraud his creditor from the punishments necessary to check and prevent so dangerous a crime.—The only thing I complain against is that the creditor whether he does or does not suspect the debtor of any impropriety of conduct, is by our present laws empowered to detain his debtor in a *close prison for an unlimited space of time.* This is manifestly too much power to place in the hands of those whose interests or passions may often seduce them to make an improper use of it. —The great error of our law is that it confounds the unfortunate with the guilty, —the debtor who is rendered by some casualty insolvent with the hardened swindler,—both are amenable to ponishment, both are put in the arbitrary power of a disappointed creditor who is at once their judge, jury, and executioner.

I would not appeal to the passions of my readers, because I feel satisfied that the principles I advocate are founded on a fair view of what is just and expedient in civilized societies.—I would however say to those who are firmly impressed

with the humane principles of the christian religion, that if they are not quite satisfied of the cruelty of the present system as authorized by the existing laws of this province, yet if not satisfied the other way, they should lean as christians to the side of mercy and join their humane endeavors to wipe out of our code the dark and suspicious regulations that make the debtor a slave.

Judge Christian has distinctly pointed out in the passage quoted in the title page of this essay the only legitimate object of civil imprisonment. It is to compel the debtor to secure to the creditor those funds over which the latter has no legal process. Now in abolishing the present system, it will be advantageous to give the creditor a legal process, to secure to him in a great variety of instances, that control over the debts and interests of his debtor, which the existing laws have not provided for him. It is but just that the creditor should be entitled to sequester the money due by a third party to his debtor, to suspend the receipt of any salary or wages that he may earn, to sequester his moveables and effects,—all this he should be authorized to do as a means of recovering what is due to him and in addition, to prevent his debtor

from leaving the country, to imprison him whenever he can show to the satisfaction of a judge, that he would otherwise risk the loss of his debt.

In addition to this it would be but just to give to the tribunals of justice a large and discretionary power to punish all kinds of criminality in debtors. The debtor who contracts a debt without fair prospects of repayment, is in the eye of moral justice a criminal.—He who suspends or neglects payment when in his power, is also criminal.—He who endeavors to hold out to the creditor or to the world a false and deceitful view of his affairs is also criminal. The extravagant debtor who dissipates in wild speculation or useless expenses the funds out of which he ought to pay his debts, and the idle man who will not make proper exertions to earn wherewith to satisfy a just demand, are also morally culpable. In those five kinds of crime which debtors may commit, it seems much more equitable and I think would be found by experience much more salutary, to commit the execution of the law in pursuing the offenders to the calm and judicious minds of well informed judges, magistrates and jurors, than to leave the mighty engine of arbitrary imprisonment in the power of

the creditor who is not only the party but the judge also.

In cases of insolvency it also appears conformable to the immutable principles of justice that the effects of the debtor should be divided among all his creditors in proportions according to the amount of their claims.—Nothing can be more simple than an arrangement of this kind, and it at once would restore the honest man to the power of pursuing his occupations without the perpetual annoyance of duns, the embarrassment and wretchedness of an undecided situation, and the tortures of dependence which to the honorable mind are worse than death.

This would be opening a gate by which virtue could escape from the arrows of misfortune, while Justice would ward off the worthless and dishonest, and prevent their taking advantage of its occasional opening.

The writer is aware that innovations are dangerous, that they should not be adopted without great deliberation and caution, lest in getting rid of a known inconvenience one may open a door to evils of equal or greater magnitude. Still it is to be borne in mind that mankind are in a progressive state, that their knowledge and acquirements especially in matters

of a moral or political nature, must be gradually improved as the mass of experience accumulates, and we are led to think that wherever an evil exists in the distribution of moral justice, it should be the aim of the wise and the worthy to seek for, and if it be possible to discover and apply a remedy. When we consider that the positions contended for in this essay are more generally received and acted upon in the present age, than at any former period, that they are carried into effect already to a certain extent in the mother country, and that their complete adoption is at present under discussion in the parliament of Upper Canada, and also in the Legislature of our great commercial neighbor the United States, we may reasonably conclude that the subject is not unworthy our attention. We may infer that the age we live in, is more adapted to the reception of an ameliorated code of laws on the subject of debts, that the opinions of society in general are obtaining a more merciful tendency, and that the mercantile world generally are satisfied that the prison is not the best mark for the price of their goods.

The writer will esteem himself happy if his remarks should be found in any way serviceable to the gentlemen who

are called on to legislate for the province. Whether the views he entertains are generally or partially correct,—whether his suggestions may in any degree be worthy of adoption is to him, personally, of little moment. He feels in common with all for the distresses that fall on the victims of misfortune, and if their sufferings can in any manner be alleviated, or their interests and rights protected beyond the present system, without weakening the frame work of society or introducing mischiefs greater than those with which he sympathizes, he will be more gratified than he can well express. Weak and imperfect as his power is to develope the true features of this part of the law, he relies on the good feeling and generosity of the reader to excuse his attempt. The enlightened reader will bear in mind the difficulty that must attend the endeavor to refute a received opinion however erroneous, and will pardon the attempt of one whose only motive is that he sincerely believes some mitigation of our law of debtor and creditor peremptorily required by every feeling of humanity.

APPENDIX.

UNITED STATES CONGRESS.

In Senate.—Tuesday, December 12, 1826.

IMPRISONMENT FOR DEBT.

Mr. JOHNSON, of Ken. rose to ask leave to introduce a bill for the Abolition of Imprisonment for Debt.

In presenting, Mr. J. remarked, that if he were offering a proposition of a doubtful character to the consideration of the Senate, he should not so often have pressed its adoption. It was a proposition which has been sanctioned and approved by a majority of the Senate at its previous session. Imprisonment for debt, he believed, had no advocates in America—certainly, none among the generous and benevolent of mankind, in any country. The contemplation of the idea struck him with as much horror as that of the tortures of the Spanish Inquisition, and it was surely as disgraceful as the continuation of that system was to Spain. It was equally productive of sighs, and tears and wo. Such being the view he entertained of it, could he return to his constituents and tell them that Congress would not devise the ways and means necessary for the preservation of innocence? The country, almost with one voice, called for the measure—the public press was unanimous in its favor, and orators and statesmen united in denouncing it as a relic of a barbarous age. It was also a violation of the spirit of our free institution—of the Declaration of Independence. It was a violation of personal liberty—it destroyed personal happiness and took from man his locomotive power. The system originated in judicial usurpation in England, whose courts had assumed the power upon MESNE PROCESS, to incarcerate an unfortunate individual. But even this usurpation was an amelioration of the horrid practice in Greece and Rome, where

the law permitted the sale of the father and his whole family to satisfy a debt. The system, odious as it was to freedom and independence, was supported by aristocracy and aided by the vindictive cruelty of unrighteous creditors. It was hostile to the morality and the precepts of the Gospel, and was a remnant of barbarism and Gothic cruelty. The obligation of man to his fellow-man should have its basis on honor and probity, and not upon the pound of flesh. He felt, therefore, that he was discharging an imperative and a sacred duty in calling upon the wisdom and experience of Congress to wipe away the stain from this fair page of our legislation, and he hoped that a decision would be had upon its merits, at an early period of the session.

The bill was read twice by unanimous consent, and referred to a select committee, consisting of Messrs. Johnson, Berrien, Chambers, Harrison and Macon.

PARLIAMENT OF UPPER CANADA. 1829.

IMPRISONMENT FOR DEBT.

Bill for Abolishing Imprisonment for Debt.—Second Reading

Mr. Rolph said that in introducing this measure to the attention of the House, he felt himself called upon to explain the objects and provisions of the Bill. He had brought it forward during the last session, and the bill he then proposed had been printed for the use of members during the recess—it had no doubt received their attention—he considered it necessary to make this explanation as a similar measure was now pending before the Legislature of the United States, that he might not be considered as following the example of that Country, and therefore draw upon himself the epithet of Democrat. The Bill now proposed went to do away

imprisonment for debt—and to release all those now in confinement, on condition of their giving bail not to leave the province—it afforded the security of property when there was any, to the creditor, but repealed the unjust and arbitrary power, which the law now gave him over the person of his unfortunate debtor, it provided a punishment to be inflicted on fraudulent debtors, as a crime against society—it punished fraud as a public offence, but did away with the power of incarcerating a man's body in a jail for that which might more properly be considered a misfortune. The barbarous practice of imprisonment for debt had been borrowed by the Romans from the Grecians, and at one time the Roman law allowed the partition of the man's body for the payment of his debts—this was afterwards abolished, and the debtor was confined in irons. The time was in our own country when the latter practice prevailed —it however was not now the case, but the body was still liable to imprisonment. The law in its present shape was attended with many hardships and cruelties—an unfortunate debtor at the instance of a hard hearted and merciless creditor might be dragged 60 or 70 miles from his family and be thrown into prison, there to remain cut off from the society of his family and friends, at a time when he most needed their assistance, deprived perhaps of the means of obtaining the common necessaries of life, not for any offence committed against the peace of society, or the public, but in many cases to satisfy the vindictive feelings of some remorseless creditor—he knew of an instance himself, which existed (at least it did exist, unless it had been lately relieved,) where a man who had served his country for many years, with a wife and seven children, and with seven wounds received in defence of his country, had been kept in jail, and punished by a rigorous imprisonment for years, although his case was one which admitted of doubt whether he really owed the debt or not. The

present Bill was such an one as he thought must recommend itself to every humane mind, for he considered it the height of cruelty and humanity to imprison the debtor who was willing to pay his debts. The Bill offered no injustice to the creditor, as it gave him the security of property, and protected the public against the commission of fraud. The legislature had from time to time passed laws for the amelioration of debtors, but had stopped short in their benevolent intentions. They had provided jail limits—they supplied the imprisoned party with an allowance of five shillings per week, when his means of self subsistence were exhausted—the aged were released—and measures had been proposed for those owing more moderate debts—these were what he would term but morsels of remedies—he would go the full length, and do away with the barbarous custom of allowing any man to measure out the quantum of punishment to be inflicted when he himself alone was concerned, and thus deprive the country of the benefits of the industry of the debtor, which would also enable him the more readily to discharge his debts—he would not attempt to justify fraud upon any grounds—the man who abandoned his family and left them to starve was justly considered as a spectacle of human depravity—and yet might it not happen that after long and rigorous imprisonment, at the mercy of his Creditor, the Debtor had been driven by despair to make a conveyance of his property, for the support of those who were more dear to him than life, which would be considered as legal fraud, and pleaded in extenuation for the very man whose cruelty had driven him to pursue a course, which had he enjoyed his liberty, his mind would have revolted at.

The bill would have one good tendency, as it would restrain the custom which prevailed too generally of extending credit. It punished the concealment of property, and the undue obtaining of credit

as fraud, while it properly withheld a power which should not be entrusted to the caprice or avarice of any individual, and which power was liable to any abuses—in all other cases the law did not allow any man to punish or award the amount of damage in his own case, and why should this be the only exception —should it be endured that any man, could at his own instance imprison his fellow creature, during pleasure—was it not repugnant to common sense and humanity—It often happened too, that the imprisonment was visited on the most innocent—misfortune, sickness, or the injustice of others, might throw an innocent and honest man on the mercy of an obdurate creditor, while the guilty cause of his misfortunes escaped unpunished—the elements—hurricane and tempest—the loss of office, and with it the loss of bread, might place an unfortunate debtor in the situation he had described. The law was barbarous and should be done away. The Indians were said to be cruel in war, but in peace they exercised no cruelty equal to this. We should give up old prejudices, and do away with this remnant of barbarity. The names of men distinguished for learning and humanity,—Bacon, Black—Eldon—Ellenborough and Dr. Johnson, could be adduced as authorities in favor of this measure, as it had received their sanction. The bill if it should pass into a law, would proclaim a jubilee throughout the province—it would restore many unfortunate and innocent men to their families and friends, and reflect the highest honor on the legislature.

Mr. *Bidwell*, after the able speech which had been made by the learned gentleman, considered it unnecessary to make any further observations—he concurred in the opinion, that it was unjust and cruel that any man should be at the mercy of another, and liable to be imprisoned as long as malice might dictate—he would punish fraud as a crime, but not visit the debtor with the hardships which the law

now inflicted upon him—the practice was barbarous and should be abolished.

Mr. *C. Jones*, had opposed the principle of the bill on a former occasion and should continue to do so—he considered the creditor was entitled to some consideration, and he believed that in most cases the honest debtor, always received consideration from his creditor—if the present bill, having a retrospective operation too, should pass into a law, it would produce a serious change in our commercial relations, and seriously affect the credit of the country.

The bill was reported as amended, and ordered for a third reading on Monday.

Mr. *M'Bride* moved that 500 copies of the petition of Robert Randall be printed for the use of members.

Mr. *C. Jones* objected, as it was unusual to print the private petitions of any person—he could not see the object of the motion unless it was to circulate what the Petition contained throughout the country—he was surprised that such a motion should be made.

He was followed on the same side by Mr. J. Jones and Mr. M'Lean.

The discussion led to a question of order, and the house was cleared of strangers.

On the door being opened.

The house adjourned.

Monday, Jan. 15.

Abolition Bill—third Reading.

Mr. *Perry* would move the recommitment of the bill, as he considered that some of its provisions in their present shape were not calculated to produce a good effect—as the bill now stood it did not go to do, what it professed—it is called an abolishment of imprisonment for debt, but he feared that where one was released from prison, it might be the means of sending two or three others to jail—if bail could not be found the person must go to jail—indictments

for fraud could be found in the Quarter Sessions, but must be transferred to the Court of King's Bench for trial, and the parties might remain in Jail for a twelvemonth.

Mr. *Lefferty* would move to commit the bill to the flames—we had already laws enough to make people honest—this Bill if it passed would cause the ruin of many persons, who had entrusted their property to others—The example of the United States with respect to the opportunities which they afford to dishonest creditors to evade the payment of their debts, was enough to shew that such a Bill as this would work injustice, and be the ruin of many families—A late misfortune, had caused him to lose his all, and it might be said that he was now at the mercy of his creditors—With honest intentions he had nothing to fear from them, without such a law as this—He should oppose it, and move its being read three months hence.

Captain Matthews was friendly to the principle of the bill, but though there were many good points in it, it had its defects—By its provisions, a man's whole property might be taken from him for the payment of his debts; and if this was not sufficient to satisfy them, the fruits of after industry might be wrested from him also; this he thought improper—after a man's all was once taken from him, he should be free to exercise his industry for the benefit of himself and family, without being liable to be stript a second time—As the Bill, however, contained the desirable object of abolishing imprisonment for debt, he should give it his support.

The *Attorney General* said, that not having been present when the principles of this measure were discussed, and when its different provisions were debated in committee, he had not the opportunity of knowing how far it was supported by the general sense of the House, or whether there would be any use in offering, at this late stage, the objections

which he entertained against the bill. If, indeed, it was one of those measures which were so often characterized in the house as liberal measures, he thought it most probable that he might as well save himself the trouble, and the house the detention, of pointing out the evils, which he was convinced, would result from it in practice; indeed, he felt little encouragement at all events to do so, because it was obvious to him, from what had taken place in the last Session, that the Legislature was little likely to agree in any measure of this description. He had himself thought that something might be done to mitigate the apparent rigor of the law with respect to imprisonment for debt; and as an experiment, and in order to proceed gradually in a matter that might very sensibly affect the commercial interests of the country, he had last year proposed a Bill, providing that when a debtor should remain imprisoned beyond twelve months, for a debt not exceeding £20, he should be discharged from confinement, on account of that debt, leaving his lands and goods still liable to the creditor.—So far he thought we might safely and reasonably go; and indeed we had the example of England for it, a similar statute having been passed there in 1803. In this house, however, it was opposed by some because they thought it went too far, and by others, because it did not go far enough. After discussion, however, it was adopted, but was rejected in the other branch of the Legislature. Now he did not see how, with this declaration of opinion so inconsistent with the Bill at present before the House, any hope could be indulged of such a measure passing.—For his part he was decidedly opposed to it, but would not, upon the third reading, do more than state his objections to the leading principles of the Bill, and should not embarrass the discussion by remarking on the several clauses. He trusted that

members who could not assent to a bill so wild in its object, and so defective in its details, would not have credit for less humanity than the hon. and learned member who had proposed it. No doubt, as individuals, they would feel the same compassion for debtors immured in a prison, though they might not feel themselves at liberty, as Legislators, to indulge those feelings, so far as to adopt an innovation which might be ruinous to the interests of the country, and for which an example had not yet been set by other Legislatures upon whom the same charge, upon similar grounds, had been frequently urged—That if the present bill passed, abolishing entirely imprisonment for debt, it would be found that commerce would be checked, and the monied transactions of the country seriously affected.

He would ask whether the banking institutions, from which so much relief and assistance had accrued to individuals, could or would, be so liberal in their accommodation, under so entire a change of circumstances? Would they venture to lend their capital to persons who, though they might have the means of payment, might set them at defiance with impunity? Could we expect that our merchants would hereafter obtain the same advances in Lower Canada, when their creditors found that they had but their character and integrity to trust to; and that they had no longer the means of compelling payment from a dishonest debtor? It had been asked by the mover of this bill, whethert he merchants in Lower Canada advanced their money or their merchandize in the anticipation of having the satisfaction of confining their debtor within the walls of a prison? Certainly not—but that was not a fair and reasonable way of putting the question. The foreign merchant, he admitted, when he gave the credit, looked to the means of the party to pay, and made his advances on the faith of those means; but then it was necessary he should possess the power

of insuring the honest application of those means—As the law now stood he had that power—if this bill should pass he would no longer have it. It had often been proposed in the legislatures of the several States of America, to abolish imprisonment for debt, but the proposition had been usually regarded as one inconsistent with the interest of society. And in this province, perhaps more than in almost any other, we should doubt the safety of so wide a departure from a system that prevails every where else—we border upon a foreign country, from which strangers of apparently respectable character, are almost daily arriving among us—every year brings thousands of settlers from Europe, whose integrity and means must be judged of from appearances. The credulity of the people of the province, in reposing confidence in strangers, was great, and it was well it was so, as it enabled them to obtain assistance and overcome their first difficulties; but too frequently the trader found he had been imposed upon,—and if this last and most effectual measure to compel a fraudulent person to pay his honest debts no longer existed, he feared that the whole course of dealing must be changed, and a very considerable check given to the trade of the country. It was an error to suppose that every person was imprisoned from mere inability to pay—it was often otherwise; obstinacy, a litigious spirit, or a fraudulent disposition, not unfrequently induced persons to suffer a long confinement, which, if they could avoid it they would. No professional gentleman could have failed to observe many instances of this, and all must know that many an honest debt had been paid, which, but for these means of compulsion, would never have been paid. He thought besides, the abolition of imprisonment for debt would be hurtful to the person dealing, as well as the person dealt with—he was convinced, if the fear of this last remedy no longer impended,

many persons would embark more heedlessly in doubtful speculation, and many would, with less reserve, exceed their income, and incur expenses beyond their ability to meet. We should look at the question in all points of view, and if we did, he was satisfied, it was impossible the house could pass this bill—its imperfections were glaring and manifest—It pretended to afford a protection which in truth amounted to nothing—it gravely provided that if any debtor by fraudulent practices contracted debt or evaded payment, he should be held to bail, or committed for the fraud and subsequently tried for it, and that the fraud must be charged in proper legal form.—This was all very well, but surely the House must see, that fraud in a moral view, and what the law designates and treats as fraud, were very different things—A debtor might shew his creditor enough money to discharge his debt, and yet refuse to pay him, and set him at defiance—however dishonest. So the law would be if this bill should pass—money could not be seized in execution and there would be no fraud. The bill did not extend the bounds of fraud as an offence against law—it professed to make no change in that respect. A person might take up £1000 worth of goods, and before the credit expired convert them into money, and live upon it, holding his creditor at defiance—or before an execution was issued he could sell his personal property, and leave the creditor no remedy—As the law now stood he could be put in jail, and compelled to disgorge—if this bill should pass there would be no remedy—he could not be punished for fraud, because the law allows him to do so, and this bill does not declare any thing to be fraud which was not fraud before—He pointed out the injurious effects of the bill, and concluded by expressing his confidence that the House could not think it right to concur in it.

Mr. Hamilton said, that as he considered some of

the clauses of the bill imperfect, he should vote for its being recommitted.

Mr. M'Bride considered the principle of the bill to be good; it did no injustice to the creditor—As the law now stood, a man might be deprived of the opportunity of providing for his family—he knew an instance where a person had suffered a long imprisonment unjustly, and the Attorney General had been instrumental in getting him liberated—he should support the bill.

Mr. Bidwell said, that he drew a distinction between fraud and misfortune. The one was deserving of punishment, and this bill went to inflict it—In this country there was not a bankrupt law for the discharge of debtors, and there need be no apprehension of injuring the rights of creditors by this bill.

Captain Matthews said, that confinement for debt was barbarous, and particularly so in some of the jails in this province—the Niagara jail, for example, he said, was not fit to keep hogs in; and he had no doubt that, in that jail had commenced the aberration of mind which Gourlay laboured under, from confinement in its cells—He himself would rather be sold a slave to the Dey of Algiers, than go to the cursed cell where Gourlay was confined.

Mr. James Wilson thought that the bill should be reheard, the country was already in an awful state, and did not require so many bills—few were now able to pay their debts, and it would be better to do something to relieve their distress than be passing so many bills—He would compare this colony to a person in the agonies of death, with a weeping family round him—the doctor is cramming him with pills, and the legislature is cramming the country with bills—this system of bill upon bill would do no good—without time being given, many families might be driven to distress, and he saw nothing doing to assist them—to use a seaman's phrase we should lie to a

little while, and after a time, when she had recovered herself, it would be time enough to legislate on such matters.

Mr. Rolph moved that the bill do now pass.

Mr. Gordon in amendment moved that it do pass this day 3 months.

On Mr. Gordon's amendment being put there were --Yeas 18--Nays 16,

Carried in the affirmative by a majority of 2, and the bill is therefore lost. Adjourned.

Friday, February 1st.

ABOLITION OF IMPRISONMENT FOR DEBT.

The House in Committee.

Mr. Gordon in the chair.

Mr. Rolph had coucluded one of the most eloquent speeches he ever made in the Assembly a few minutes before we arrived--and

Mr. James Wilson was on his legs, saying that he did not wish to shew stern opposition to the bill, but hoped some one better qualified than himself, would bring in a better bill—He would prefer the Israelitish law to the present, for after being sold for seven years for a debt he could not pay, the debtor was again free-- but our laws bind for life.

Dr. Lefferty, notwithstanding the learned gentleman's powerful appeal, thought the remedy worse than the disease, if they abolished imprisonment for debt they would also abolish and ruin almost every individual who has had confidence and trust in the people of this country for years back--the hon. mover had better have brought in a bill to diminish that exorbitant table of fees taken by the lawyers --who make long bills with enormous charges which is displeasing to the country ; but to bring in a bill to take away the hard earnings of his neighbours

would be an injury to all who have given credit. Had the bill passed last session, he (Dr. L.) would not have been able to get on—people under such an act would perhaps have doubted the expediency of loaning him money—not that he was a dishonest man, nor unwilling to pay, but it is usual for the creditor to look to all the remedies likely to be available in case of bad payments.

Preamble carried, 21 to 9.

Mr. Rolph after moving the adoption of the 1st. enacting clause, said that the hon. member for Lincoln thought the principles of this bill would go to destroy commerce ; he (Mr. R.) thought differently, but assuming that it would go to destroy commercial credit, even that would be better than that a creditor should be permitted to take his poor debtors and immerse them for an undefined space of time in a jail—When man credits man, it is on the consideration that he has the means of paying, and not in the expectation of immersing a fellow creature in a dungeon. The member for Prince Edward had thrown out calumnies against the lawyers, he would let them defend themselves—the learned doctor is a physician of eminent skill, and has got debts due him throughout the country—does he look forward to imprison those who owe him ? Lawyers are as much in vogue as doctors, they say that law produces exorbitant charges—yet the law charges are defined and known, while the physician's demand is unlimited by any regulation whatever—Imprisonment for debt will not pay the creditor, the unfortunate man is not allowed to work and pay, but must remain in a prison and weep over his misfortunes—Under the Roman law the father had an entire right over the life of his offspring, and under that law many sons had been slaughtered—that law does not exist here, and yet filial affection distinguishes the present age as much as any past age —neither

would the abolition of imprisonment for debt, add to the number of dishonest debtors.

Dr. Lefferty.—It is the property that gets credit and not the individual—this law would be opening a door to such people as might be inclined to make use of dishonest means to pay their debts, and would effectually destroy credit.

Mr. James Wilson.—It is a frequent thing for legal gentlemen, when country members come forward to speak of the law, to accuse them of being ignorant. When I cannot make a common bargain without having a lawyer at my elbow, it will not be supposed that I understand all the quirks and quibbles of legal characters, altho' I have been sent here as a legislator to make laws. I am of opinion we do too much work, some of which we have to undo again, and a great deal more which we should be glad to undo, but cannot. Who is there here who has not been made sensible of the ill effects of laws which have been hastily and unthinkingly passed in the assembly! I tried law myself and got very little satisfaction—and I wish my constituents would send a learned man in my stead to this house, fit to contend with these lawyers—I have often perceived, that when we come to divide upon points of national policy there are lawyers who, however well skilled they may be in the technicalities of their profession, know as little as other people, out of that profession, and make as many mistakes, and come to as erroneous conclusions, as those whom they term ignorant and uninformed.

Dr. Lefferty.—Had been intrusted by his constituents to oppose this bill—It would have an ex post facto effect—and affect the collection of debts already contracted—There was the town of York—how could creditors get their money if they could not compel payment—He believed that York owed so much that if the whole place were to be set up at auction, it would not pay its debts.

Mr. Beardsley.—The learned mover of the bill had left nothing unsaid on the merits of the question. As to the remarks of another hon. gentleman, he would acknowledge, that legal men did sometimes practice imposition, but thought that could be no good reason for running down the whole profession. He had heard great complaints of physicians getting paid, first by the government and then by the people—If the lawyer charge more than he ought to do he may be punished, but physicians are under no restraints, and make as long bills as they please. Nor were the merchants altogether free from faults, When they give credit they charge more than when they sell for cash, in proportion to the risk they suppose themselves to run—and in 6 months some of them make out accounts, and afterwards add interest upon interest, until they have the poor debtors deeply in their power.

Mr. Hamilton could say nothing that would add to the eloquence of the mover, or his arguments in support of this bill—those who put people in jail, after taking all their property, and who keep them there, not only tax the unfortunate debtors, who have nothing to pay, but also the generosity of all their friends, who have to collect money for their relief, and atone for their misfortunes. In former days kings and emperors were very desirous to make all men of one religion :—an emperor (Charles Vth.) tried to make every body Roman Catholics, but did not succeed—He afterwards abdicated, and went into a monastery, where he tried the experiment of making clocks and watches go together: but notbeing successful with those mechanical things, he wondered greatly why he ever could have expected to make human beings of one religion.—So it was in regard to law: there was no possibility of getting all men to think alike on questions of expediency.

Mr. Bidwell read, from the Upper Canada Herald the opinions of a great many eminent and learned men in various ages of the world, who had been opposed to imprisonment for debt—among his authorities was the Lord's Prayer. "Forgive our debts as we forgive our debtors." Whether this bill passed or not, he was satisfied that the time would come when imprisonment for debt would be abolished in all civilized nations.

Mr. C. Jones said that the arguments he had heard in favor of the bill during the several sessions in which it had been under consideration, had not induced him to be in favor of its provisions.—If the principle of the bill were adopted the security of the creditor would be destroyed—commercial credit, would be at an end. He owned that the bill had been brought forward with great ability.—In alluding to the case of Jonah Brown, to which Mr. R. had adverted, he would say that that man, with a perverseness which not one in a hundred would have shewn, had refused to pay an honest debt—he owns much property, and is incarcerated because he will not allow it to be sold—he had made an offer to pay so much, his offer had been received, and then he withdrew it again, and chose to remain in jail.

Mr. Coleman said that if the bill took a retrospective view as well as a prospective one, if it applied to past debts contracted under the law as it is, he could not agree with it—as it altered the security under which the debt had been contracted;—but if it was only prospective in its application and not calculated to take the people by surprize, he would vote for it.

Mr. C. Jones. This would not weaken his objections to the bill—a man of good reputation and property, might obtain credit; and instead of paying at the appointed time, might at once sell his property, put the money in his pocket, and say it was all gone.

Such conduct the law would consider no fraud—the debtor could not be incarcerated, nor made to give up to his creditor the money he owed him.

After several of the clauses had been read—

The Attorney General rose and said he saw a decided desire to pass the bill on the part of the committee.—The ingenuity and eloquence of the hon. member from Middlesex he was willing to acknowledge; but could not take the same view of the bill before the committee.—The opinions which had been read to the committee were, the opinions of great moralists; but were not such as they could be guided by in the present state of society in the province. In respect to persons now in jail for non-payment of their debts, he could not support a measure, which would allow them all to quit confinement without satisfying in any degree the claims of their creditors–They had no bankrupt law—no means of compelling debtors to discover what they had done with their property, they had no Equity court in operation—how would the country be left if the legislature were to pass this law—A debtor might sell his estate, and go over to the United States of America, and set his creditors at open defiance—No creditor trusts his debtor for the secret satisfaction of imprisoning him, but he trusts to that resource to compel him to disclose his effects and pay his honest debts. As to the case of Matthew Leech, who was incarcerated at the suit of the late Mr. Richmond of Kingston, an honest and just man, the statement of hardship would not be borne out by facts. Mr. Leech would not pay his just debts, arbitration was offered to him and he refused it. Mr. Richmond is now dead, and Mr. Leech released from confinement, he having at last compounded with his creditors, and paid them what he could according to his means. Two years ago he (A. G.) proposed that they should imitate the British parliament, in a measure passed twenty years ago

providing that if any person shall remain confined six months in prison, for a debt of £20 or less, he may be released forever, but his goods, and the visible property he may afterwards acquire are held responsible.

There were, every year, thousands of persons from Europe, with no satisfactory testimonials of character from the country from which they arrived; Many of these persons can easily obtain credit—but if, on trial, the creditor should discover that the person he has trusted is of an indifferent character, he has the means in his hands of incarcerating him; and without a power of arrest these people could obtain no credit. Of late years some of the commercial houses in Montreal who have been pressed by their creditors have failed. They had not, however, been harsh to their numerous debtors in this colony, nor are creditors in general in Canada, accused of being severe. There had been cases in which debtors had taken and sold their property, and if this bill passed they could set their creditors at defiance—He had known instances of persons, reputed five or six years ago worth three, four or five thousand pounds, from whom their Montreal creditors would be glad to get five shillings in the pound, although they are still able to pay twenty. If they should pass this bill the numerous frauds that would ensue would cause the people from one end to the other of the province to raise their voices against it, and for a return to the present mode. He thought that if the bill were passed, merchants in Lower Canada and the United States would not trust the province. The provision before the committee said that, if any persons committed any fraud they might be indicted for it—but the bill left undefined what fraud was. There are people here who owe £6000 in Montreal, and who have many little debts due them, to perhaps £10,000. —If this bill pass they may give over shop-keeping

and keep the monies they collect, setting their creditors at defiance. The mover of the bill had said that, because cases of harshness had occurred, this bill was necessary to prevent their recurrence. Such cases were very far from being general—there is a case of a debtor now in jail in this district for £2000; he is, very probably, honest; perhaps he has a family who depend upon him—I do not know he can ever pay the half of what he is imprisoned for. His creditors think he has some means, and he wont pay anything. They say to him, enforce payment of the debts now owing you, give up the lands you own, and for which you have sought no great title, pay us £500 and we will let you go. If this bill were passed, this person would walk out of jail, and keep all he has, and his creditors could neither indict nor harm him. He did not consider it in the power of man during the present session to, provide a remedy for all the evils the abolition bill would entail. Jail limits are now allowed and they are ample, any debtor who could procure two friends to be bail, not for his debt, but for his honesty, merely for his keeping certain bounds till he had satisfied the debt, might enjoy these limits*—the learned Attorney General went into the consideration of several clauses of the bill, to a length which our limits will not allow us to follow—he said that in all his dealings he never took out three writs of capias ad satisfaciendum, he was not sure he had taken out two, in all his practice, during a period of fourteen or fifteen years. If they could fancy a state of society free from guilt and free from crime, and in which punishment would be unnecessary, such a bill would be a wise and prudent measure, but among the mixed population of this new country no such visionary expectations could be

*The reader will bear in mind that Upper Canada is meant, not Nova Scotia.

formed. In Scotland and England, among a concentrated and moral population, this experiment had not been found successful, nor fit for society. He had not imagined that this bill would have been entertained by a majority of the house, but he perceived it was so entertained by a large majority; he did not therefore expect to convince many there present of the improper tendency of the change.

Mr. Bidwell said that the extracts he had read to them, were not the opinions of mere moralists—he had quoted the Bill of Rights and Magna Charta,—Lord Bacon, Lord Coke, Sir W. Blackstone, Lord Chancellor Talbot and Lord Eldon: these men's opinions were entitled to weight—they were the opinions of men of practical sense and wisdom, nor did he think what was morally wrong must be politically right—the learned attorney general had not examined the bill with attention—if a man intended to leave the province his creditor might require security, and if that security was not given, the debtor might then be imprisoned—the law was unchanged—the avails of the debtor's industry might be taken afterwards wherever they could be found. He knew a case of a person who was then, and had been for months in jail, at the instance of a creditor, actuated from vindictive feelings. A law affording no relief in such a case was an unrighteous law and ought to be repealed as a disgrace to the statute book.—The learned Attorney General had said that fraud was not described in the bill—He (Mr. B.) was of a different opinion, but if it did not define fraud that might still be done—The learned gentleman is surprised at the change which has taken place in the minds of members, and lays great stress on his honourable friend's speech;—it was the effect of conviction, the change would be slow and gradual, but certain and irresistable. If the right of imprisonment was a law seldom used, and the learned Attorney General had seen the

debtor imprisoned in only one or two cases, during his extensive practice of about fifteen years, in this populous district;—there could be the less objection to its being taken away. In one of the States imprisonment for debt had been abolished, andin the general legislature the same measure had been advocated by some of their most eminent statesmen. England was a commercial country, and any alteration in the law there might be attended with confusion, but here they were in a new country, where such an experiment could be more safely tried.

Mr. *Rolph* rose and said that the Attorney General had adverted to instances where property did actually exist, but not so as to be available to the creditor, he (R.) would repeal the law because there was no legal conviction under which a creditor acted in imprisoning his debtor, he merely had an inducement to do so arising out of his suspicions—The learned Attorn. General would find it provided that the creditor may seize the debtor,and get security for his not leaving the province until he satisfies the judgment, and that there is a lien also on all the debtor's future effects. The learned A. G. had only used one or two writs for imprisonment in his practice, but had other lawyers issued only one or two ?—In ancient Rome a man was publicly sold for debt in the market place—When the philanthropic Howard took his first tour to different jails in England, he thought imprisonment had not been so great a punishment;—but put misery where it could be seen, let nothing be done in the dark, from the pillory to the gallows. People in confinement for being in debt are often removed far from their friends —there was the case of JonahBrown, whose friends, wife, and family are in the Johnstown district, while he is incarcerated here in York. The committee might be told that few had suffered from the inquisition, and that there was no great harm in it; but we

do not know;—the tribunal is secret and the punishment unseen; a man may perhaps pay a small debt but a large one is more difficult to liquidate. The learned Attrn. Gen. has said that a small debt ruins no one, but that a large one might—The ruin of the creditor would not benefit the debtor. They had mortgages, plenty of them in this province, and it had been said that one quarter of them belong to the lawyers, one half to the merchants, and, he hoped, the other quarter was owned by the yeomen [here we were out for some time.] The learned Attorney General has supposed 9 or 10 debtors mulish and dishonest, he (Mr. R.) would suppose 9 or 10 creditors harsh and tyrannical, who take every advantage of their debtors and place them in jails,—well knowing they have no means, but to gratify vindictive feelings—Was it right and compatible with liberty that creditors should have the discretionary power of imprisoning or not as they saw fit? We have been told that this is an ex-post-facto-law, and the Attorney General had enquired whether we ought to take away the remedy without providing a subsistute—He (Mr. R.) took away no remedy,—sell the lands, sell property, take goods and chattles—but do not allow the poor and honest man to be placed by his unfeeling creditor in a dungeon. If the committee had given debtors the limits of the jail, who would refuse them the limits of the province?—if security is given why refuse to extend the limits over the colony?—the debtor would have the more extensive range, and be able to turn his industry to better advantage, and so pay his debt, The A. G. had said that the moment this law passes, creditors will sweep away their debtors' property. Which is better? To sweep away a man or to sweep away his goods! Now the property is taken, and at last the person. There might be cases under the proposed act where a man would say "you cannot imprison me now, and I wont pay

you," but let such a case occur, still it would not be an argument in favor of allowing an innocent man to be put in jail.

The Attorney General did not expect to convince the mover of the bill that he was wrong ; but he(A. G.) thought it would require the deliberation of months to frame clauses to render the bill advisable. Suppose a man in difficulty and going to the United States—and that he get bail and forfeit his bond —there are many men who though they would have paid their own honest debts, do not care for paying a bail debt. These may put their houses and money and property out of their hands. No man acts without a motive, and creditors have no inducement to be tyrants: for if they find their debtors to be honest there can be no advantage in putting them into prison, where they can do nothing. He would grant that persons were frequently put in jail for debt, but they are kept there at a dollar a week beyond the period at which the debtor becomes convinced they have no property. Let the hon. mover and himself (A. G.) visit these dungeons and let an appeal be made to them to relieve the inmates, and he would go as far as that gentleman ; but he did not wish to be considered as inhuman because he endeavoured to keep in mind, that as a legislator he had duties to perform to creditors as well as to debtors; and could not consider the feelings of the hon. mover of the bill ("whether actually felt or merely avowed") of humanity, as a rule for altering the existing laws in so important a matter as confinement for debt. The learned gent. had expressed surprise that he (A. G.) should have thought it advisable to release small debtors, and not large ones—If he was mistaken in his views he took along with him the whole of the British legislature. It was thought in England that a debt of £20 held out no sufficient inducement to a debtor to continue fraudulently in jail for more than six

month. It is afterwards taken for granted that he has not the means. But if the sum for which he is confined is £1000 and if he has comfortable accommodations in prison, or the limits, he may remain a year rather than sacrifice his property, when a short confinement will render it safe. How often had they found persons, who in adverse circumstances had forfeited that character and honest principle they had maintained and enjoyed for years. Would it not be easy to point out cases where men who had formerly obtained thousands of pounds on credit, but who from their conduct, could not now obtain £10 or £15? He would answer for it, that in the transfers of property which take place in this country, not one in fifty had a mortgage as a security; but if this bill were to become a law, those who had given credit would be without a remedy. [The A. G. here instanced a case where a person in York who would not give up his lands was imprisoned, and released as soon he gave up his lands and effects to pay his just debts, and added, that this law would have allowed the debtor to defy these creditors.] He had not found in the jail of this place many debtors, and experience taught him that in this country creditors were not cruel—he believed that in the jail of York no person had been confined for any length of time, with the exception of that singular debtor who had remained for years. He was opposed to the abolition of imprisonment for debt in any country. Perhaps hereafter, the ingenuity of some person would suggest a happy frame of measures, such as would oblige a debtor to disclose the true state of his affairs: until then he would defer the abolition —No one in England would have advocated this measure, unless combined with proper precautions. There a debtor who gives a dishonest account of his circumstances may be transported for felony, there a man may be declared a bankrupt and ruined. In

Lower Canada a man might be ruined by the proposed law, while his debtors here defy him and live in affluence--In New York, since the imprudent relaxation of laws touching contracts, men might be seen driving their carriages and four, and living in splendor, whose dishonest failures had ruined hundreds, but who could not be made amenable to punishment, nor their property taken from them. Abolition of imprisonment for debt under this bill, he did think, would be dishonest.

Mr. *Jonas Jones* said that in the district of Bathurst there were 12,000 souls, but not one of them was in jail: in the Midland and Johnstown districts there were comparatively few confined for debt--The Attorney General's argument had been, not that this measure of imprisoning was often used, but that it stood over the debtor as a remedy in the hands of him who had confided his property. As to Mr. Jonah Brown, persons would be found now who would give him £500 for his property over and above the debt he is confined for. In the dower bill (introduced by Mr. Rolph) there is a provision that the widow may bring her action against the goods and chattels, and failing in that, MAY PLACE THE BODY IN JAIL; how could that clause be reconciled with the principles of the bill? Yet the same gentleman had brought them both in, and in the same session too!

Mr. Rolph would as soon allow doctors to make experiments on living men, *pro bono publico*, as to place it in the power of creditors to make experiments upon their debtors how much the latter could endure of the horrors of a prison, before they give up that property they are or may be supposed, but are not known to possess. Better it were that the seller of property should take his mortgage, than that a power should be allowed him of sitting in judgment, upon the bare suspicion that his debtor could pay, with power of imprisonment for the term of

his natural life. If a creditor neglects to take security, they ought not to confer a power of imprisoning the debtor on him, as a reward for his neglect.

Doctor Lefferty said that if the remote cause of imprisonment were looked into, it would be found to be the debtor's own fault in taking credit. This said he, is an agricultural country where the merchants depend on the growing crops for the payment of the year's credit—this bill would ruin the traders, for it took away the power of the creditors to collect their debts, unless the debtors should be pleased to pay them.

Mr. Beardsley offered an objection to one of the clauses, as leaving it in the power of the court to decide whether a defendant might or might not traverse; while in the present practice a man might traverse as a matter of course.

Mr. Rolph explained.

The clause was carried.

The bill is to continue in force for four years.

The committee rose—the speaker took the chair.

Mr. Gordon the chairman reported the bill, the report was received, and the bill ordered for a third reading.

IMPRISONMENT FOR DEBT.

May, 1827.

A document of considerable importance has just been laid on the table of the House of Commons—we mean the return ordered by the house of the number of persons confined for debt in the various jails in and around the metropolis, and in the several county and other gaols throughout Great Britain

and Ireland. The return for England is divided into three general heads; the first containing the number of persons in prison on mesne process; the second, that of persons confined on judgment recovered; and the third, those confined for costs only. In the return for Scotland, where the law of debtor and creditor is considerably different, the distinction of mesne process is not known, and in that for Ireland, the three classes are not distinguished. The number of persons confined for costs only, is inconceivably small, not exceeding three or four. In the returns for England, the debtors are distinguished—first, in respect to the time they have been in prison, and secondly, in respect to the sums for which they have been arrested. These distinctions are only partially attended to in the return for Ireland. The document we are noticing contains, it ought to be observed, the number of persons in confinement on one particular day, namely, the 29th April, 1826; and it does not comprehend any of those who are in custody for contempt of the Courts of Chancery and Exchequer, not for debts due to the Crown.

The total number of persons of every description, in prison for debt, on the day above mentioned, in Great Britain and Ireland, amounted to 3,820

Of these there were in England, . . . 2,860
in Scotland, . . . 216
in Wales 74
in Ireland, ... 664

Which gives for England about 1 for every 3,500
for Wales one for every 7,000
and of Scotland and Ireland 1 for every 10,000

Of the 3,156 debtors confined in Great Britain, there had been, on the 29th April alluded to, in prison, for periods less than six months, ... 2,429

For periods exceeding six months, and less than twelve months, ... 263

From one to two years, ... 228

From two to three years, ...	76
From three to four years	56
For longer periods than four years, .	104
Of the same debtors there have been imprisoned, for sums less than £20 . .	936
For sums less than £60 .	811
For sums less than £100 .	538
For £100 and upwards .	341

Of the six hundred and sixty-four Irish debtors, very nearly five hundred were confined for sums less than £20.

The total number of debtors confined in the different prisons of the metropolis and its immediate vicinity, amounted, on the day before mentioned, to eighteen hundred and thirty eight, which were distributed as follows;

Debtors' Prison for London and Middlesex	519
The Fleet	256
Horsemonger-lane County Gaol . . .	88
Borough Compter, Southwark, ...	15
King's Bench, ...	855
Marshalsea	150

From an Upper Canada newspaper.

INSOLVENT DEBTORS.

In the present state of the law in this province, we know of no field for exercising the divine virtue of charity—no opportunity of bringing into play the noblest feelings of the human heart—equal to that afforded by insolvent debtors. In other countries, they have insolvent laws—charitable societies—gaol allowances—and healthy and commodious apartments for the relief and accommodation of in-

solvent debtors, so that their punishment while confined is but light, and is still more alleviated by the idea that it is only temporary; indeed there are many instances in the old country, in which the condition of a distressed individual is actually bettered, when he is arrested for debt; but in Upper Canada, there is not the most faint ray of light to illume the unfortunate debtor's horizon—not the most distant hope to cheer his heart in the awful and interminable gloom with which he is surrounded. If his creditor be merciless, there is no salutary statute, no saving clause; no humane and potent tribunal, but that of charity alone, to which he can look for relief: he is thrown into a filthy, loathsome, and unhealthy apartment, without other bed than the boards of the floor—other food, than the contaminated air of a dungeon—other society than that of the vilest felons. The helpless little ones, (if any such he has) who at home were wont to look up to him alone for food, now become his greatest benefactors, and out of the scanty supplies that were on hand at the time of his arrest, minister to his wants, so long as their little store will admit—but when that is exhausted, what is to become of the unfortunate prisoner? Or where is his helpless family to look for support? The law allows him nothing, and if the keeper of the prison be humane, (which is not at all times the case, although eminently so in this town) his income in this colony does not permit him to indulge his feelings to any great extent in favor of the prisoner, even should actual starvation threaten his dissolution. Where is the man, then, in easy circumstances, that has a drop of the milk of human kindness in his composition, who would grudge to give a dollar or two in the year, in order to rescue a fellow man from such a situation and restore him to society and to the bosom of his distressed family? We therefore hope that something will be done to

afford effectual relief to poor unfortunate insolvent debtors, until an insolvent law shall be introduced, and we know of no better way than by forming an insolvent debtors' relief society, throughout the province, whose business it would be to raise funds for such prisoners as were destitute of means—to act as agents in compounding with their creditors, and to adopt such measures as would lead to their speedy enlargement. How many individuals, useful members of society, consigned to perpetual imprisonment for a paltry sum, could thereby be relieved for a mere trifle? This would be doing the good work, and doing it in a way that calls aloud for the immediate attention of the people of this country, as some of our retiring and other merchants would seem disposed to bring the whole of their out-standing accounts to a close by the sole aid of the *Ca. Sa.*

We have been led to submit these reflections by a communication which we received from a poor industrious mechanic named Wilcocks, now confined in the gaol of this town for the paltry sum of ten pounds. He has met with severe losses by sickness and otherwise, and has a small helpless family on the brink of utter ruin, should he not be speedily enabled to pursue his daily labor for their maintenance. He is well known in town as an honest hard-working carpenter, and we hope the inhabitants will reach out the hand of humanity to save him from sinking amid the angry billows of adversity.

CHARACTER OF A PRISON.

"A prison is a grave to bury men alive, a place wherein a man for halfe a yeares experience may learne more law, than hee can at Westminister for an hundred pound.

"It is a Microcosmus, a little world of woe, it is a place that will learne a young man more villainy, if he be apt to take it, in one half yeare, than he can learn at twenty dicing-houses, bowling allies, brothell houses or ordinaries; and an old man more policie than if he had been pupil to Machiauel.

"It is a place that hath more diseases predominant in it, than at Constantinople in the plague time.

"It is a little commonwealth although little wealth is common there; it is a desart, where desert lies hoodwinckt, it is a famous citie wherein are all trades, for here lies the Alchymist that can rather make ex auro non aurum, than ex non auro aurum.

"It is as Innes of Court; for herein lawyers inhabit, that have crochets to free other men, yet all their quirks and quidities cannot enfranchise themselves.

"It is your bankrupt's banquetting-house, where he sits feasting with the sweet-meats borrowed from other men's tables, having a voluntary disposition never to repay them againe.

"It is a purgatory which doth afflict a man with more miseries then euer he reaped pleasures.

"It is an exile which doth banish a man from all contentments, wherein his actions doe so terrifie him, that it makes a man grow desperate.

"To conclude, what is it not? In a word it is the very idea of all misery and torment; it conuerts joy into sorrow, riches into pouertie, and ease into discontentments."

CHARACTER OF A CREDITOR.

"A creditor hath two paire of hands, one of flesh and blood, and that Nature gaue him; another of iron, and that the law giues him; but the one is more predominant then the other, for mercy guides the one and mammon the other. But if he once consider what hee goeth about to doe, and that it is the image of God whom he laboureth to deface and oppresse with miseries and calamities; then the softness of the one doth so operate, that it meets with the hardness of the other, which neuer comes to passe, but when Grace and Mercy kiss Law and justice.

"Thou takest with one clap of a varlet's hand, from the courtier his honor, from the lawyer his tongue, from the merchant the seas, from the citizen his credit, from the scholler his preferment, from the husbandman the earth itselfe, and from all men, (as much as thou maist) the brightnesse and warmth of the sunne of heaven. In a word, if nothing will make the stony heart relent, thou in being cruell to thy debtor art worse than the hang man; hee before he strikes begs pardon, thou takest a pride to condemn where thou maist save."

The Bishop of Salisbury's Opinion of a Prison.

"The grave of the living, where they are shut up from the world and their friends, and the worms that gnaw upon them their own thoughts and the gaoler. A house of mengre looks and ill smells, for

lice drink and tobacco are the compound. Pluto's court was expressed from this fancy; and the persons are much about the same parity that is there. You may ask as Menippus in Lucian, which is Nireus, which Thersites, which the beggar, which the knight;—for they are all suited in the same form of a kind of nasty poverty. Only to be out at elbows is in fashion here and a great indecorum not to be threadbare. 'Mirth here is stupidity or hardheartedness, yet they feign it sometimes to slip melancholy, and keep off themselves from themselves, and the torment of thinking what they have been."

A prison is a house of care,
A place where none can thrive,
A touchstone true to try a friend,
A grave for one alive.
Sometimes a place of right,
Sometimes a place of wrong;
Sometimes a place of rogues and thieves,
And honest men among.

Sir William Herbert's Case, 26, *Eliza. in the Exchequer, in Error.* *Coke's Reports' L.* 3, *fo.* 11.

Resolved, That at common law (except in special cases) neither land nor body were liable to execution in debt or damages recovered, but execution was to be done by *Fieri facias* or *Levari facias* of his goods and chattels and profits growing upon his land, but in debt brought against one, as heir, his land was liable to execution, because the plaintiff had no other remedy; for the goods belong to the

executors, but the body, goods and lands of the King's debtor or accomptant were ever liable to execution. But in all acts vi et armis where a capias lyeth in process, there after judgment a capias ad satisfaciendum lyeth, and the King shall have a capias pro fine, and in such cases the law (the preserver of peace) subjecteth the body to imprisonment, and by Marlebridge* c. 23 and Westm† 2 c. 11. a capias was given in an accompt, the process before being a distress infinite, and by 25 E. 3. c. 17,‡ the same process given in debt as in account, for before this act the body was not liable to execution as aforesaid.

Cimon, Miltiadis filius, Atheniensis, duro admodum initio usus est adolescentiæ. Nam cum patereius litem aestimatam populo solvere non potuisset, eo eamque causam in vinculis publicis decessisset; [illegible] eadem custodia tenebatur, neque legibus Atheniensium emitti poterat, nisi pecuniam, qua pater multatus esset, solvisset, &c. Corn. Nep. in vita Cimonis.

Mercy to Debtors enjoined Koran, C. 2, vol. 1. p. 49.

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*52 Hen. 3. 1267. †13 Ed. 1. 1284. ‡1350.

IMPRISONMENT FOR DEBT.

In answer to a letter from Mr. Cook, Chairman of a Committee in New York on the subject of abolishing imprisonment for Debt, Col. R. M. Johnson, of Kentucky, addressed the gratifying statements that are here annexed.

In Kentucky, the system was adopted in the win-

ters of 1821–2 ; of course it has been in full operation about nine years, and during a period of pecuniary embarrassment, such as the history of the State cannot furnish a parallel. At the commencement it encountered some considerable opposition, because a part of the system was not retained to operate upon fraudulent debtors. But as it became better understood, its principles more fully developed, and its humanizing effects more completely unfolded, so, in proportion, the opposition sunk away by degrees, till almost every murmur of complaint was hushed into silence. At the present time I believe, the sentiment of approbation is almost universal among all classes and conditions of society. Indeed we begin to look back with surprise and astonishment that such a barbarity should ever have existed, or that a republican community should have supposed that a gross violation of personal liberty should ever have been necessary. In attempting to abolish imprisonment for debt, the great error arises from a reluctance to give up the whole system. It is jeopardized by attempting to retain a part to punish the fraudulent debtor. This sentiment has produced several ineffectual attemps in our State Legislature to revive the Ca. Sa. upon the suggestion, or proof of fraud. But that body wisely refused the proposition, from a well grounded opinion, that the unfortunate debtor would, in course of time, fall a victim to this odious practice in all its cruelty. Let fraud be defined and punished as a violation of the Criminal Code. Let the friends of this measure keep steadily in mind, that nothing will save the honest debtor, but a total and unqualified repeal of the barbarous policy. I am induced to believe that Kentucky is the only country on the globe, where the debtor cannot under any *circumstances*, be imprisoned for debt. It was confidently asserted, that the abolition of the old system would produce great

frauds, annihilate credit, work injustice, and reduce the state to confusion. Time has dissipated these fears, and proved them to have been imaginary. I have no hesitation in asserting, from my knowledge within that portion of the State wherein I reside, that since the abolition of imprisonment for debts, in the State of Kentucky, a million of dollars more have been paid than would have been under a rigorous execution of the laws of imprisonment for debt. The system of credit was never more sound and healthy: and now consoling the reflection that our jails are alone devoted to the confinement of the felon.

How much desolation of the heart has been prevented by this humane system; the cries of the famished children are no more heard in our happy land, the lamentations of the wife are no longer heard at the iron-grated windows of our prisons. Nor do we any longer see the degrading spectacle of the felon and the debtor confined to the same bed of straw.

I have merely glanced at this subject, the arguments in its favor are inexhaustible.

I am extremely gratified that this matter is to be brought before the Legislature of the great State of New-York. It belongs legitimately to the State to act upon the subject; as a law of Congress would be confined to a very few and limited cases; the great reason why I have relaxed my efforts before that body for the last two years, is, a settled conviction that Congress would pass no law at this time, but what would place the citizens of Kentucky in a worse condition. All that the States can reasonably require, is that the laws of the several States should govern the process of the Federal Courts.

With sentiments of great respect, your fellow citizen.

RICHARD M. JOHNSON.

In compliance with the judicious recommendation of Gov. Lincoln to the Legislature of *Massachusetts*, this subject has come under the consideration of that body. In a debate on the bill introduced for the purpose of meliorating the present system, Mr. Blake of Boston, and Mr. Baylies of Taunton, made the following remarks:—

Mr. Bl[illegible] said the first section contained a provision wh[illegible] existed in most other States, and it was extraordinary it had never been established in this. For want of it, a man's property, to any amount, might be attached, on a charge of Debt, and ruin brought on him. This section provided that the plantiff, before a writ could be issued in his favor, must swear that he believed the defendant owed him the amount for which he claimed the attachment. The severe laws against debtors which existed in ancient times, he said, were enacted because it was then unusual and unnecessary to get into debt—and the debtor was, therefore considered a criminal—but now nearly every body was more or less in debt, credit was the system of business, the system of the government.

Mr. Baylies called the attention of the house to the third provision of the bill, exempting females from imprisonment for debt. This exemption, he said, depended on principles which did not apply to other cases. Females possessed no civil rights. They could not come into this Hall to legislate for themselves; nor had they any part in the choice of those by whom the laws are made—and yet we inflicted upon them every severity of our laws. It was, too, a greater hardship for a female than for a man to be imprisoned. Their sensibilities were more acute, their sex more tender; and they were, therefore less able to undergo the punishment. From their position in society, the disgrace of imprisonment was tenfold greater to them

than to us. The law of imprisonment might, in many cases, fall gently on a man; but it was always severe to the single or the widowed female. He implored the house to erase the barbarism from their statute book. He would not say that the imprisonment of females was a case of frequent occurrence; but he had personal knowledge of the fact, that women, respectable women, women with large families, had been dragged to the jails of the State for debt. The outrage, he doubted not, would often be repeated. The cause of it was, that the creditor might, in this way, wring the amount of his demand from the friends or relatives of the female debtor. Was it good policy in us to reward avarice and cruelty, at the expense of the humane and generous?

The following resolutions, on the same subject, have been introduced into the legislature of New York.

Resolved, That in the opinion of this House, the laws in relation to imprisonment in civil suits, should be modified in the manner following:

1st. So as not to authorise the imprisonment of any female on mesne or final process in any civil court.

2d. So as not to authorise the imprisonment of any person for a debt or demand less than ten dollars.

3d. So as to require the plaintiff in every action for any demand, to make oath to the amount claimed, and the justice of the same, before bail shall be demanded.

4th. If the party arrested deny the justice of the claim; then compel the plaintiff to give security for the payment of all costs and damages to the person arrested, provided it shall appear that the action was groundless and vexatious.

5th. So as to authorise the immediate discharge of every debtor arrested on mesne or final process, who shall make oath that he possesses no property

or means whatever, by which he can satisfy in whole or in part, the debt or demand for the recovery of which such process shall have issued.

6th. So as to authorise the immediate discharge of any debtor, so arrested as aforesaid, who having property, shall make oath, that he believes the same is insufficient for the payment of all debts, and who shall make out and deliver under oath to a proper officer, to be named for that purpose, an assignment of all his estate, both real and personal, accompanied by a list of his creditors, and their respective demands.

7th. So as to prevent the issuing of any execution in the nature of a capias ad satisfaciendum, unless the creditor shall make oath, which shall be endorsed upon said process, in substance as follows:

That he has reason and does verily believe the defendant has property concealed, so that an execution cannot be levied upon it; and that there is no other way of getting possession of such property.

8th. So as to provide for the punishment of any person by imprisonment in the state prison for a term of years, who shall be found guilty of fraud or perjury in procuring his discharge.

9th. In all judgments founded on *tort*, where there is an evidence of immorality—it shall be the duty of the officer so to have it expressed in the execution, and to such cases this statute is not intended to apply.

FINIS.